

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
AMENDING 312 IAC 18-3-18, WHICH)	Administrative Cause
GOVERNS STANDARDS FOR CONTROL)	Number: 08-207E
OF THE EMERALD ASH BORER,)	
BY ADDING AREA TO THE QUARANTINE)	(LSA #09-85(F))

**REPORT OF PUBLIC HEARING, ANALYSIS,
AND CONSIDERATION FOR FINAL ADOPTION**

1. Rule Processing

For consideration is a proposed amendment to 312 IAC 18-3-18, which governs standards for the control of the emerald ash borer (*Agrilus planipennis*), (the “EAB”), adding area that has been found to be infested with EAB to Indiana’s intrastate quarantine.

On November January 13, 2009, the Natural Resources Commission gave preliminary to the proposed rule amendment. A “notice of intent” to adopt the proposed rule amendment was posted to the Indiana REGISTER on February 18, 2009. The notice listed Megan Abraham, with the Department of Natural Resources, Division of Entomology and Plant Pathology, as the “small business regulatory coordinator.” No comments were received in response to this notice.

As required by Executive Order, a proposed governmental fiscal impact analysis of the rule proposal was submitted to the Office of Management and Budget on February 12, 2009. The analysis, in substantive part, is attached to this report as Exhibit B.

The Office of Management and Budget reviewed the fiscal analyses, and recommended in its letter filed July 7, 2009, “that the rule changes be approved.”

On July 8, 2009, the NRC, Division of Hearings submitted a copy of the proposed rule to the Legislative Services Agency (the “LSA”) along with the associated Economic Impact Statement (EIS). The EIS is attached to this report as Exhibit C.

On July 13, 2009, a copy of the notice of public hearing was forwarded to LSA for posting. The justification statement required under IC 4-22-2-24(d)(3) indicated:

The emerald ash borer is a serious pest of North American forests. The beetle lives and feeds exclusively on ash (*Fraxinus* sp.) species including white, red, green, blue, black, and pumpkin ash, which are found throughout Indiana. In Indiana, ash comprises approximately seven percent of wood lots in Indiana. The U.S. Forest Service has estimated that there are approximately 147,000,000 ash trees in Indiana forests and wood lots. Urban foresters have estimated that Indiana has nearly as many ash trees in the urban environment, in the form of street trees and landscape plantings, as in the forested environment consisting of another 145,000,000 trees. The reported value of ash logs processed through Indiana mills on an annual basis is over \$8,000,000. Another \$364,000,000 has been estimated to be invested in urban and street trees not on private property. Currently, the emerald ash borer has been found in 21 counties in the state of Indiana. At the present time, science has not provided the tools necessary to combat this pest either by early and reliable detection of individuals or low level populations or by effective controls over large expanses of territory. Education and regulatory work consistent with the rule being proposed are the best available tools at the present time to prevent long-range artificial spread of this pest and its associated impact in tree mortality to Indiana's ash resource.

The primary benefit of the proposed rule is a reduction in artificial spread of the emerald ash borer. The reduction of spread of this pest directly correlates to a reduced mortality of ash trees in urban and rural settings outside the quarantined area. Fewer ash trees infested with the emerald ash borer equates to less removal of dead trees for private homeowners, less value loss to the timber industry, and increased value to existing habitat in Indiana's natural resources and forests. Secondary benefits to the proposed rule include increased awareness of the damage that invasive pests like the emerald ash borer have on the natural resources, the industry, and the public; advances in forest management techniques; and improvement in conducting forestry business operations. From improvement in business operations, another benefit is the maintenance of trade of ash materials between counties, states, and international entities.

Types of small businesses subject to this rule include nurseries/nursery dealers, sawmills (primary and secondary), logging companies/timber buyers, arborists, campgrounds, and firewood producers/retailers. The estimated number of entities that will be affected by this rule is approximately 39 small businesses in the townships that are proposed for addition to the quarantine. The total potential economic impact to all small businesses in the proposed quarantined area is \$7,440. The estimated fiscal impact to state government for the quarantined townships is \$2,205 if all businesses need and implement a compliance agreement. Impact to the state will primarily be the creation and administration of compliance agreements with each small business. This analysis is based on the assumption that every small business in the quarantined area would require a compliance agreement and utilize regulated materials. It is the opinion of the DNR that in reality only one-half to three-quarters of the small businesses analyzed in the proposed quarantine area would require a compliance agreement, which would significantly reduce the potential economic impact to the small businesses in the quarantined area.

The 2005 Timber Product Output Survey created by the IDNR Division of Forestry determined that 17.9 million board feet of ash lumber was processed by sawmills in the state of Indiana. The estimated annual lost revenue from processing ash in infested counties is \$1,854. The current estimate of annual benefits from a street tree is \$60/tree, which totals \$86,247 of lost annual benefits that ash street trees in the quarantined areas provide per year ("USDA, Forest Service, "Trees Pay Us Back", NA-IN-11-06). The potential economic loss of ash trees in the infested areas of Indiana proposed in the rule, including those used by the sawmill/logging industry and loss benefits provided by street trees, totals \$88,101 annually. The approximate total economic impact to small businesses in the proposed quarantined area is \$7,440. The total economic impact to the state amounts to \$2,205. Assuming all businesses have operations that require compliance agreements, the estimated annual administrative cost for local small businesses and the state totals \$9,645. With an estimated annual benefit lost to emerald ash borer of \$88,101 (loss of street tree and sawmill processed ash), the rule is estimated to achieve a 9:1 benefit/cost ratio.

By imposing this rule, the artificial spread of this pest can be slowed. Counties/townships that do not currently have an infestation of the emerald ash borer can be saved from the potential damage to their ash tree resource. By managing the artificial spread to nonquarantined townships and counties, the existing ash stands will continue to be utilized and the timber industry will be allowed to continue to support this faction of the economy in Indiana. The urban ash resource will continue to provide many benefits. Research will

have time to develop more and better methods to manage this pest with the intent to maintain ash as a viable natural resource. Imposing this rule will allow and aid the marketing of ash materials within Indiana's industries and to industries outside Indiana and will prolong ash within the rural and urban forest resource affording more time for research to develop improved management methods and understanding of the emerald ash borer.

On July 13, 2009, the LSA issued by e-mail an “authorization to proceed” with rule adoption. As required by Ind. Code § 4-22-2.1-5, a copy of the Economic Impact Statement was forwarded to the Indiana Economic Development Corporation (the “IEDC”) for review and comment.

A public hearing was scheduled for August 13, 2009. Notice of the public hearing and the text of the proposed amendments were posted to Indiana REGISTER on July 22, 2009. This notice included the statement under Ind. Code § 4-22-2.1-5, concerning rules affecting small businesses. The notice also included information required under Ind. Code § 4-22-2-24. Notice of the public hearing with similar information was published on July 20, 2009 in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County, Indiana. In addition, notice of the public hearing and a summary of the proposed rule changes were published on the Commission’s Web-based calendar. A link to the proposed rule was added to the Commission’s Website in order to simplify receipt of public comment on the proposal. (<http://www.in.gov/nrc/rules/proposed.html>)

On August 5, 2009, the IEDC forwarded its comment on proposed LSA #09-85 by e-mail. The IEDC’s comments were posted to the Commission’s Website on August 5, 2009 at <http://www.in.gov/nrc/2348.htm>, and were available for review at the public hearing as required by Ind. Code § 4-22-2.1-6. The IEDC’s comments are attached to this report as Exhibit D.

2. Report of Public Hearing

The public hearing was convened as scheduled on August 13, 2009. No member of the public appeared for the public hearing. No comments have been received throughout the rule amendment process.

3. Consideration for Final Adoption

On November 21, 2006, under 7 CFR 301.53-2(a), the Administrator of the U.S. Department of Agriculture (USDA), the federal government, through USDA’s Animal and Plant

Health Inspection expanded the EAB quarantine to include the entire state of Indiana. This federal quarantine prohibits the movement of ash tree materials and hardwood firewood out of the state of Indiana (interstate movement) without federal certification. This does not change Indiana's proposed quarantine intrastate expansion, which would prohibit the movement of ash tree materials and hardwood firewood out of the areas listed in 312 ICA 18-3-18(c) without a certificate of inspection for the emerald ash borer. Also, on November 10, 2008 and December 22, 2008, under the authority of Ind. Code § 14-24-4-2 and Indiana Administrative Code § 312 IAC 18-2-2, the Director of the Department of Natural Resources along with the State Entomologist declared those counties proposed to be added to the quarantine area to be infested with EAB. The instant proposed rule would make permanent the inclusion of these counties in the EAB quarantine area. Within this context, the proposed rule amendments published in the Indiana REGISTER, and attached as Exhibit A, is ready for consideration as to final adoption.

3. Recommendation

It is recommended that amendments to 312 IAC 18-3-18 be given final adoption as contained in Exhibit A as attached.

Dated: August 14, 2009

Hearing Officer
Jennifer M. Kane

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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #09-85

DIGEST

Amends 312 IAC 18-3-18, pertaining to entomology and plant pathology, to regulate the emerald ash borer (*Agrilus planipennis*), a pest or pathogen, to provide standards for quarantine and to add counties and townships to the quarantine area. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

312 IAC 18-3-18

SECTION 1. 312 IAC 18-3-18 IS AMENDED TO READ AS FOLLOWS:

312 IAC 18-3-18 Control of the emerald ash borer

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 18. (a) The emerald ash borer (Coleoptera: Buprestidae: *Agrilus planipennis*) is:

- (1) a pest or pathogen; and
- (2) regulated under this section.

(b) The definitions in 312 IAC 1, 312 IAC 18-1, and as follows apply throughout this section:

- (1) "Certificate of inspection" means a document issued or authorized to be issued by the state entomologist or the U.S. Department of Agriculture to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist or the U.S. Department of Agriculture for this purpose, including a phytosanitary document or multiple use quarantine certificate.
- (2) "Compliance agreement" means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this section and other stated conditions.
- (3) "Eradication area" means the area including all plants infected by the emerald ash borer and any other ash species within one-half (1/2) mile radius of an infected plant.
- (4) "Infested area" means a site where:
 - (A) the emerald ash borer is present; or
 - (B) circumstances make it reasonable to believe that the ash borer is present.
- (5) "Inspector" means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this section.
- (6) "Move" means to:
 - (A) ship;
 - (B) offer for shipment;
 - (C) receive for transportation;
 - (D) transport;
 - (E) carry; or
 - (F) allow to move or ship.

(c) The following counties include an infested area and are regulated under this section:

- (1) The following townships in Adams County:
 - (A) Blue Creek Township.
 - (B) French Township.
 - (C) Hartford Township.
 - (D) Jefferson Township.
 - (E) Kirkland Township.
 - (F) Monroe Township.
 - (G) Preble Township.
 - (H) Root Township.



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- (I) St. Marys Township.
- (J) Union Township.
- (K) Wabash Township.
- (L) Washington Township.
- (2) The following townships in Allen County:
 - (A) Aboite Township.
 - (B) Adams Township.
 - (C) Cedar Creek Township.
 - (D) Eel River Township.
 - (E) Jackson Township.
 - (F) Jefferson Township.
 - (G) Lafayette Township.
 - (H) Lake Township.
 - (I) Madison Township.
 - (J) Marion Township.
 - (K) Maumee Township.
 - (L) Milan Township.
 - (M) Monroe Township.
 - (N) Perry Township.
 - (O) Pleasant Township.
 - (P) Scipio Township.
 - (Q) Springfield Township.
 - (R) St. Joseph Township.
 - (S) Washington Township.
 - (T) Wayne Township.
- (3) Hamblen Township in Brown County.**
- ~~(3)~~ (4) The following townships in Dekalb County:
 - (A) Butler Township.
 - (B) Concord Township.
 - (C) Fairfield Township.
 - (D) Franklin Township.
 - (E) Grant Township.
 - (F) Jackson Township.
 - (G) Keyser Township.
 - (H) Newville Township.
 - (I) Richland Township.
 - (J) Smithfield Township.
 - (K) Spencer Township.
 - (L) Stafford Township.
 - (M) Troy Township.
 - (N) Union Township.
 - (O) Wilmington Township.
- ~~(4)~~ (5) Concord Township in Elkhart County.
- (6) Georgetown Township in Floyd County.**
- ~~(5)~~ (7) The following townships in Hamilton County:
 - (A) Clay Township.
 - (B) Delaware Township.
- ~~(6)~~ (8) The following townships in Huntington County:
 - (A) Clear Creek Township.
 - (B) Dallas Township.
 - (C) Huntington Township.
 - (D) Jackson Township.
 - (E) Jefferson Township.
 - (F) Lancaster Township.
 - (G) Polk Township.
 - (H) Rock Creek Township.
 - (I) Salamonie Township.
 - (J) Union Township.
 - (K) Warren Township.
 - (L) Wayne Township.
- (9) Plain Township in Kosciusko County.**

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~~(7)~~ **(10)** The following townships in LaGrange County:

- (A) Bloomfield Township.
- (B) Clay Township.
- (C) Clearspring Township.
- (D) Eden Township.
- (E) Greenfield Township.
- (F) Johnson Township.
- (G) Lima Township.
- (H) Milford Township.
- (I) Newbury Township.
- (J) Springfield Township.
- (K) Van Buren Township.

~~(8)~~ **(11)** The following townships in Marion County:

- (A) Lawrence Township.
- (B) Washington Township.

(12) Polk Township in Monroe County.

~~(9)~~ **(13)** The following townships in Noble County:

- (A) Albion Township.
- (B) Allen Township.
- (C) Elkhart Township.
- (D) Green Township.
- (E) Jefferson Township.
- (F) Noble Township.
- (G) Orange Township.
- (H) Perry Township.
- (I) Sparta Township.
- (J) Swan Township.
- (K) Washington Township.
- (L) Wayne Township.
- (M) York Township.

~~(10)~~ **(14)** The following townships in Porter County:

- (A) Jackson Township.**
- (B) Portage Township.**
- (C) Westchester Township. in Porter County**

~~(11)~~ **(15)** White River Township in Randolph County.

~~(12)~~ **(16)** The following townships in St. Joseph County:

- (A) Harris Township.
- (B) Portage Township.

~~(13)~~ **(17)** The following townships in Steuben County:

- (A) Clear Lake Township.
- (B) Fremont Township.
- (C) Jackson Township.
- (D) Jamestown Township.
- (E) Millgrove Township.
- (F) Otsego Township.
- (G) Pleasant Township.
- (H) Richland Township.
- (I) Salem Township.
- (J) Scott Township.
- (K) Steuben Township.
- (L) York Township.

~~(14)~~ **(18)** The following townships in Wabash County:

- (A) Chester Township.
- (B) Lagro Township.
- (C) Liberty Township.
- (D) Noble Township.
- (E) Paw Paw Township.
- (F) Pleasant Township.
- (G) Waltz Township.

~~(15)~~ **(19)** The following townships in Wells County:

- (A) Chester Township.

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- (B) Harrison Township.
- (C) Jackson Township.
- (D) Jefferson Township.
- (E) Lancaster Township.
- (F) Liberty Township.
- (G) Nottingham Township.
- (H) Rock Creek Township.
- (I) Union Township.
- ~~(46)~~ **(20)** The following townships in White County:
 - (A) Honey Creek Township.**
 - ~~(A)~~ **(B)** Liberty Township.
 - ~~(B)~~ **(C)** Union Township.
- ~~(47)~~ **(21)** The following townships in Whitley County:
 - (A) Cleveland Township.
 - (B) Columbia Township.
 - (C) Etna-Troy Township.
 - (D) Jefferson Township.
 - (E) Richland Township.
 - (F) Smith Township.
 - (G) Thorncreek Township.
 - (H) Union Township.
 - (I) Washington Township.

(d) The following items are regulated articles:

- (1) The emerald ash borer in any living stage of development.
- (2) Any ash tree (*Fraxinus* spp.), including nursery stock.
- (3) A limb, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.
- (4) An ash log, slab, or untreated ash lumber with bark attached.
- (5) Composted and noncomposted ash chips and composted and noncomposted ash bark chips at least one (1) inch in diameter.
- (6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of the spread of the emerald ash borer.
- (7) Cut firewood of any nonconiferous species originating from a regulated area.

(e) A person must not move a regulated article outside an infested area except under the following conditions:

- (1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of the emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.
- (2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.

(f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:

- (1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.
- (2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher if the article is:
 - (A) shipped in an enclosed vehicle; or
 - (B) completely enclosed by a covering adequate to prevent access by the emerald ash borer.
- (3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.
- (4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.
- (5) The article is not combined or commingled with other articles so as to lose its individual identity.

(g) A regulated article originating outside a regulated area that is moved into a county regulated under

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subsection (c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).

(h) A person must not move a regulated article from an infested area through any nonregulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher, if the article is:

(A) shipped in an enclosed vehicle; or

(B) completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.

(3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.

(i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.

(j) A person who moves a regulated article in violation of this section must move or destroy the article, at the person's or owner's expense, as directed by the state entomologist.

(k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this section.

(l) Uncomposted ash chips and uncomposted ash bark chips not larger than one (1) inch in diameter are exempted from the requirements of this section.

(m) Any ash species within the eradication area shall be removed and rendered incapable of supporting a life stage of the emerald ash borer.

(n) Regulated articles from another infested state or any part of a state infested with the emerald ash borer are prohibited entry into Indiana without an accompanying certificate of inspection or phytosanitary document issued by the U.S. Department of Agriculture or the plant health regulatory agencies of the originating state.

(o) Harvest for timber or other use of the wood of any non-ash forest species within the eradication area is prohibited until after:

(1) all ash has been removed; and

(2) the site is released by the state entomologist or his or her designee.

(p) A person must not move ash, in any form, from the eradication area without a compliance agreement signed by the state entomologist or his or her designee.

(Natural Resources Commission; 312 IAC 18-3-18; filed May 25, 2005, 10:00 a.m.: 28 IR 2942; readopted filed Sep 19, 2008, 10:23 a.m.: 20081008-IR-312080076RFA; filed Oct 1, 2008, 4:08 p.m.: 20081029-IR-312080413FRA)

Notice of Public Hearing

Posted: 07/22/2009 by Legislative Services Agency
An [html](#) version of this document.

FISCAL IMPACT ANALYSIS TO STATE AND LOCAL GOVERNMENTS
LSA Document #09-85

A calculation of the estimated fiscal impact on state and local government, including the effective date of the rule

The estimated fiscal impact to state government for the quarantined townships is two thousand two hundred and five dollars (\$2,205.00) if all businesses need and implement a compliance agreement. Table E-1 lists total costs per county.

Impact to the state will primarily be the creation and administration of compliance agreements with each small business. Creation of the compliance agreement will entail a 0.5 man day for a single state employee to write the agreement. Administration of the agreement will entail another 0.5 man day twice during the emerald ash borer flight season and once during the non-flight season. Estimating the average hourly rate of a Division of Entomology and Plant Pathology employee to be approximately nineteen dollars and sixty cents (\$19.60) an hour, the cost to the state to create and administer each compliance agreement should be approximately two hundred and twenty dollars and fifty cents (\$220.50) per business.

Table E-1 was created with input from Table B-1 and displays the total number of small businesses per county that are anticipated to need a compliance agreement. The total number of small businesses in Table E-1 include: Primary/Secondary Sawmills, Logging Companies/Timber Buyers, Firewood Producers/Retailers, and Arborists per county. However, not all of these businesses in each county are expected to need a compliance agreement. Table E-1 does not include the number of Nursery/ Nursery Dealers or Campgrounds in each county as these types of businesses are not anticipated to require a compliance agreement.

Table E-1: Estimated Fiscal Impact to State Government to Administer the Emerald Ash Borer Rule for the Number of Small Businesses in Each County.

County	Number Small Businesses	Total Cost per County
Brown	1	\$220.50
Floyd	2	\$441.00
Kosciusko	5	\$1,102.50
Monroe	0	\$0.00
Porter	1	\$220.50
White	1	\$220.50
Total	10	\$2,205.00

Fiscal impact to local government is minimal as local government will not administer the rule. Local government may decide to implement marshalling yards to gather and mitigate infested ash materials; the impact to local government may be negated by the use of ash materials to improve local community grounds and parks. Should they chose to contract a local sawmill, these marshalling yards may be used as a source of ash for creation of park benches, community signs, and mulch products.

Identification of any sources of revenue affected by the rule

Timber sales from DNR properties may be impacted by this rule. Ash materials sold from the properties located in quarantined townships will adhere to standards set by the rule and companies buying these materials will be required to be in compliance. Some companies may decide not to participate in sales from DNR properties because of the quarantine. However, the impact to revenue is expected to be very minimal because few DNR properties in the quarantine townships sell timber.



A few state parks may encounter a slight decrease in attendance due to the inability of visitors to bring in their own firewood. It is estimated that this impact would be very low as current attendance reports for state parks are above prior years.

Sales tax revenue from the sale of ash products is not expected to be impacted by the rule, and if any, the impact would be very small. Sawmills still continue to move and sell ash products under compliance agreements.

Identification of any appropriation, distribution or other expenditures of revenue affected by the rule

DNR salaries will be utilized to administer this rule. Expenses for emerald ash borer surveying will continue to be allocated to monitor the distribution of the insect as well as discovering new satellite populations. Survey expenses are needed to provide data used in the management of the quarantine. State expenditures for quarantine management are supported by and used to match federal grants for emerald ash borer management.

The estimated increase or decrease in revenues or expenditures of state and local government that would result from the implementation of the rule

There is no anticipated increase in revenue for state and local government from this rule. Decrease in state revenue from the rule is not expected, and if any, the decrease would be very low. No decrease in local government revenue is expected from the rule.

The assumptions used in making the fiscal impact calculation

This fiscal impact calculation assumes that all currently licensed vendors will remain in business in the coming years and that all of them will continue to deal with ash materials. Many nurseries and nursery dealers have already made the decision to stop sale or destroy existing ash stock. These calculations also assume that each of the sawmills (primary and secondary) will continue to utilize ash materials throughout the year. In fact, many have reduced the amount of ash materials to be utilized during the flight season, but this may be accommodated by increased utilization during the non flight season. This calculation also assumes that all vendors will be willing to apply for and implement standards set by a compliance agreement. A small number of vendors may chose not to handle ash or implement compliance agreements imposed by this rule.

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TITLE 312 NATURAL RESOURCES COMMISSION**Economic Impact Statement**
LSA Document #09-85**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses****Estimated Number of Small Businesses Subject to this Rule:**

Several small businesses in Indiana will be impacted by the proposed rule. Types of small businesses subject to this rule include: Nurseries/Nursery Dealers, Sawmills (Primary and Secondary), Logging Companies/Timber Buyers, Arborists, Campgrounds, and Firewood Producers/Retailers. For the townships included in LSA Document #09-85, 39 businesses are impacted by this rule. Table B-1 lists the number of businesses by county and business type impacted by the rule.

Table B-1 Impacted Small Businesses by County and Type of Business

County	Nursery/ Nursery Dealer	Sawmill (Primary)	Sawmill (Secondary)	Logging Company/ Timber Buyers	Firewood Producer/ Retailer	Arborists	Campground	Total Small Business per County
Brown	0	0	0	0	1	0	0	0
Floyd	4	0	1	1	0	0	0	6
Kosciusko	4	1	3	0	0	1	2	11
Monroe	0	0	0	0	0	0	0	0
Porter	16	0	0	0	0	1	2	19
White	1	0	1	0	0	0	0	2
Total	25	1	5	1	1	2	4	39

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

In order to process regulated material from these or other quarantined townships, the small business may need to apply for and have in place compliance agreements approved by the DNR and may have to obtain certificates of inspection. Though the compliance agreement will be created and processed by the DNR, the small business owner will need to initiate the process by applying for and meeting guidelines set by the compliance agreement. It is estimated that each business will incur a cost of 0.5 man days to complete the paperwork to initiate a compliance agreement. Some businesses, primarily sawmills, logging companies, and firewood producers, will need a federal compliance agreement from the USDA/APHIS if they sell/move regulated items across the state line. Depending on the business in question, additional steps may be required to mitigate for emerald ash borer.

Nurseries will need to ensure that they keep accurate records of recipients of ash tree stock being sold within these townships, ensuring that these trees do not leave the quarantined township. There is no anticipated cost for the nurseries (Table B-2) to maintain records of the sale of ash trees.

Sawmills will need to keep records of the origin of ash materials and how it is being mitigated to prevent development and spread of emerald ash borer. Logging companies also need to keep records of the origin of ash, whether it has been mitigated, and where the ash is delivered or sold. Both sawmills and logging companies will need to provide shipping documents and inspection certificates for the sale and movement of ash. They will also need to maintain records and have them available for inspection by the DNR or USDA/APHIS. To maintain and manage records, it is estimated that 0.5 man hours per shipment are required. The estimated number of man days for each sawmill or logging company to maintain proper management of all records within the business is 0.5 man days per month. Assuming that the average employee earns \$15 per hour, the annual reporting and record keeping costs to each sawmill and logging company would be \$720 per year (Table B-2).

Arborists will also need to have compliance agreements in place and record exactly how and where ash materials are disposed of. Industry chippers under compliance agreements with the DNR are responsible for keeping records. These records include routine engine maintenance, length of time the chippers are run, and how often chipper blades are sharpened, adjusted, or replaced. Paperwork and administrative impact is estimated to be less than six man days per year. Assuming that the average employee earns \$15 per hour, the annual reporting and record keeping costs to each small business would be \$720 per year (Table B-2).

Campgrounds (private and public) will not need compliance agreements. However, if they are in a



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quarantined township and sell firewood that may leave the quarantined area, they will need a compliance agreement and will be required to mitigate the firewood. It is estimated that campground owners will only sell firewood for use on their campground. The additional administrative cost for campgrounds is firewood management, which includes training staff to ask campers if they brought firewood, exchanging firewood with campers, and collection and burning of firewood left at campsites. These administrative costs are not the result of the quarantine but the result of emerald ash borer presence near their campground. Thus, there is no anticipated record keeping or administrative cost for campgrounds (Table B-2).

Firewood producers that move regulated materials outside of the quarantined areas would require a compliance agreement. The analysis by the Division of Entomology and Plant Pathology of registered businesses found one firewood producer in the quarantined area. The administrative cost for the firewood producer in the quarantined area is estimated to be the same as the sawmill/logging companies.

**Table B-2: Estimated Average Annual Administrative Cost for Emerald Ash Borer
Quarantine Compliance by Small Business Type**

Small Business Type: Assumptions for Administrative Costs.	Annual Average Administrative Cost:
Nursery/Nursery Dealer: No administrative cost unless able to sell existing ash stock.	\$0
Sawmills/Logging Companies: Maintenance/management of records = 0.5 man days/month.	\$720
Firewood Producer/Retailer: Maintenance/management of records = 0.5 man days/month.	\$720
Arborists: Maintenance/management of records = 6 man days/year.	\$720
Campgrounds: No administrative cost unless selling firewood outside quarantined area.	\$0

Estimated Total Annual Economic Impact on Small Businesses to Comply:

Nurseries and nursery dealers in quarantined townships will most likely stop sale of ash seedlings or trees due to the emerald ash borer's impact in the market. The trees can not be sold and moved outside the quarantined area because the only method to certify the tree free of the emerald ash borer would kill the tree. The economic impact to each of these small businesses in loss of revenue will be determined by how much ash material each business currently has in stock. Wholesale a two inch caliper ash tree can be sold for approximately \$110 dollars. Retail each tree may be sold for approximately \$175 dollars. Thus, the total annual economic impact may be a few hundred dollars to several thousand dollars from the loss of ash trees not sold and removed from inventory.

The impact of the emerald ash borer and the USDA/APHIS quarantine, which was instituted in 2006, has reduced if not completely eliminated the sale of ash trees in Indiana. Once the ash trees are removed, the nursery will have no further impact from the quarantine and will not have any economic impact to comply with the quarantine.

If logs move during the flight period of the emerald ash borer, adult borers may emerge from the logs awaiting processing. If the logs move during the nonflight period of emerald ash borer to a sawmill and are not processed before the flight period, they are also a risk to spread emerald ash borer. Primary sawmills, those that process logs into sawn lumber, are a risk of spreading emerald ash borer from an infested forest. Secondary sawmills pose less of a threat of spread as these sawmills typically handle sawn lumber or other material that has already been mitigated in a manner that would decrease the likelihood of spreading emerald ash borer. Logging companies/timber buyers also pose a threat of spreading the emerald ash borer by moving infested trees. The economic impact to these small businesses would only apply if the small business in question handles ash material.

The economic impact to sawmills and logging companies/timber buyers involves additions and changes to the business operation to comply with the quarantine. These changes involve movement of logs from the forest to the sawmill in a manner to comply with the quarantine. It also involves handling and sawing of ash logs in a timely manner to comply with the quarantine. Making these additions and changes may incur additional operating costs for these small businesses. The business operation will change during the summer period because moving ash logs from or through quarantined townships requires complete enclosure of the logs in the transportation vehicle. With this requirement, sawmills and loggers may choose not to handle ash during the summer season, which is the flight period for emerald ash borer. The annual economic impact for sawmills and logging companies/timber buyers to comply is estimated to be minimal, approximately \$720/year/business. This estimate does not include impacts should the business decide not to handle ash because of emerald ash borer.

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For arborists, it is estimated that the economic impact will occur through additional handling and hauling of regulated ash material. Arborists will need to ensure that ash materials being removed from private land will be mitigated (chipped to a size that makes the material unregulated) or disposed of at predetermined regulated destinations. The cost of that mitigation may be passed on to the consumer, or the arborist may be able to absorb the cost through the sale of mitigated ash material.

The DNR, Division of Entomology and Plant Pathology has recently instituted a program to assist arborists and the chipper industry ensure compliance with the EAB rule. This program certifies the chipper once per year with the business having a one-time cost of 0.5 man days per crew of two employees. At an estimated hourly wage of \$15 per hour per crew member, the estimated cost to small business per chipper would be \$120 per chipper. By placing chippers under compliance agreements for periods up to a year and monitoring the effectiveness of the chipper in question, the DNR is able to ensure that the industry is compliant with the rule and materials chipped by these chippers are deregulated prior to exiting the quarantined areas. The annual economic impact to arborists to comply with the rule is estimated to be minimal, approximately \$840/year/business. This estimate includes the cost of having each of the businesses chippers under a compliance agreement for mitigation of regulated articles.

It is estimated that only a few campgrounds would ask for compliance agreements to transport firewood and that this is not a major source of revenue for these vendors. It will be at the private campground owner's discretion as to whether firewood will be allowed to be imported from other counties/townships. A ramification to campgrounds may be a small loss in revenue due to some customers not visiting the site if they are not allowed to bring their own firewood. However, it is the decision of the campground to not allow firewood and not a quarantine requirement. The annual economic impact to comply for campgrounds is estimated to be minimal as campgrounds that sell firewood typically import firewood from surrounding areas, and most likely this firewood would be obtained from an area that is under the same quarantine level as the campground itself.

The economic impact to firewood producers involves changes to business operations to comply with quarantine requirements. This includes ensuring that regulated articles are not being moved outside of quarantined areas without mitigation. The annual economic impact to comply is estimated to be minimal.

Table B-1 lists the total number of small businesses that may be impacted by this rule in the counties and townships that are proposed for quarantine. As stated above, nurseries/nursery dealers and campgrounds will not be impacted directly by the imposition of this rule. Nurseries and nursery dealers have already been impacted by the imposition of the federal quarantine instated by the USDA/APHIS and most heavily impacted by consumer awareness of the emerald ash borer and the possibility/probability of this invasive species infesting ash trees in Indiana. Campgrounds will not be economically impacted directly by the rule but by their willingness to comply with the rule to restrict movement of firewood into their private forests. If any economic impact would occur to private campgrounds, it would be in the form of lost business if customers refused to camp where they could not bring their own firewood. As shown in the Table B-3, sawmills (primary and secondary), logging companies/timber buyers and arborists will be impacted by the proposed rule. These companies will only be impacted if they utilize regulated material. Considering the current federal and state quarantines, many of the companies included in the table below (particularly secondary sawmills) may decide to stop using these materials in favor of nonquarantined materials.

The total potential economic impact to all small businesses in the proposed quarantined area is \$7,440, Table B-3. This analysis is based on the assumption that every small business in the quarantined area would require a compliance agreement and utilize regulated materials. It is the opinion of this department that in reality only one-half to three-quarters of the small businesses analyzed in the proposed quarantine area would require a compliance agreement, which would significantly reduce the potential economic impact to the small businesses in the quarantined area.

Table B-3 Estimated Economic Impact to All Small Businesses in the Proposed Quarantined Area

Business Type	Total # Small Business with Potential Impact in Counties/Townships Proposed for Quarantine	Cost per Small Business	Total
Nursery/Nursery Dealers	25	\$0	\$0
Sawmill (Primary)	1	\$720	\$720
Sawmill (Secondary)	5	\$720	\$3,600
Logging Company/Timber Buyers	1	\$720	\$720
Firewood Producer/Retailer	1	\$720	\$720
Arborists	2	\$840	\$1,680
Campgrounds	4	\$0	\$0
Total	39		\$7,440

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Justification Statement of Requirement or Cost:

The reported value of ash logs processed through Indiana mills on an annual basis is over eight million dollars; another 364 million dollars has been estimated to be invested in urban and street trees not on private property. Currently, emerald ash borer has been found in 21 counties in the state of Indiana. By imposing this rule, the artificial and natural spread of this pest can be slowed. Counties that do not currently have an infestation of the emerald ash borer can be saved from the potential damage to their ash tree resource. By managing the artificial spread to nonquarantined counties/townships, the existing ash stands will continue to be utilized and the timber industry will be allowed to continue to support this faction of the economy in Indiana. The urban ash resource will continue to provide many benefits. Research will have time to develop more and better methods to manage this pest with the intent to maintain ash as a viable natural resource. Imposing this rule will also allow nonquarantined townships to continue to market ash materials to other states and encourage trade between the states and the markets outside of the nation. Without this rule, federal restrictions as well as further restrictions from nonregulated states may be placed on the state of Indiana, making it difficult to utilize existing ash in any form.

Regulatory Flexibility Analysis of Alternative Methods:

(A) Less stringent compliance or reporting requirements:

The compliance agreements are developed for each business with the intent to fit the requirements to each business operation to have minimal operational and economic impact but at the same time meet the biological needs of the rule. Thus, compliance agreements are made as flexible as biologically possible.

(B) Less stringent schedules or deadlines for compliance or reporting requirements:

For compliance, the biology of the emerald ash borer guides the establishment of time frames to operate under the quarantine. Until future research provides additional biological data to support amending the quarantine time frames, the current deadlines and schedule are as flexible as possible to manage the emerald ash borer effectively.

(C) The consolidation or simplification of compliance or reporting requirements:

The USDA/APHIS and the DNR write compliance agreements. Each agency reciprocates on these compliance agreements. The state of Indiana recognizes and adopts the USDA/APHIS compliance agreement to meet state needs for the small business. USDA/APHIS will also recognize a state of Indiana compliance agreement. When required, these agencies work together to develop compliance agreements in consultation with each other. The monitoring of small businesses is also managed jointly to avoid duplication. These agencies work to consolidate and simplify compliance agreements and reporting requirements for all small businesses.

(D) Establishment of performance standards:

The quarantine establishes performance standards to meet biological needs to manage emerald ash borer. The standards are adapted to each small business's operational aspects to minimize impact to business but at the same time meet biological needs.

(E) Exemption of small businesses from part or all of the requirements or costs:

Each business operation is analyzed for the need to comply. Through analysis, the business operation may handle ash or ash products in a manner that complies with the rule. In this situation, they would be given a compliance agreement outlining the business operation and stating the operation method is in compliance with the rule. If the small business analysis finds that the business does not handle regulated material, the business does not need to meet the requirements of the rule and the rule has no impact. Analysis of the business is conducted upon request by DNR or USDA/APHIS at no cost to the business.

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August 4, 2009

Bryan W. Poynter
Chairman
Indiana Natural Resources Commission

Dear Mr. Poynter:

Pursuant to IC 4-22-2-28, the Indiana Economic Development Corporation ("IEDC") has reviewed the economic impact analysis for small business associated with rule changes proposed by the Indiana Natural Resources Commission ("NRC") on behalf of the Indiana Department of Natural Resources ("DNR") and contained in LSA Document 09-85. The proposed rule amends 312 IAC 18-3-18 concerning quarantine and the regulation of the spread of the emerald ash borer to provide standards for quarantine and add counties and townships to the quarantine area. Businesses impacted by the rule include: nurseries/nursery dealers, arborists, campgrounds, and firewood producers/retailers. DNR estimates that there will be 39 small businesses impacted by this rule.

The proposed rule defines certain regulated materials and requires that affected businesses may have to apply for and enter into a compliance agreement with DNR in order to process regulated materials. Costs occurring as a result of the rule include the time spent to apply and meet the guidelines that are set by the compliance agreement approved by the DNR. Although the agreement will be created and processed by the DNR, it is estimated that each small business will incur a cost of 0.5 man days to complete the paperwork to initiate the compliance agreement.

Nurseries will need to ensure that they keep accurate records of the recipients of ash tree stock being sold within the quarantined townships, ensuring that the trees do not leave the quarantined township. There is no anticipated cost for the nurseries to maintain records of the sale of ash trees. Costs incurred by sawmill and logging companies include, the amount of time necessary to manage the new recording and reporting requirements. The time estimate is 0.5 man days per month. Assuming that the average employee earns fifteen dollars (\$15) per hour, the annual reporting and record keeping costs to each small business would be \$720 per year. Arborists will also need to have compliance agreements in place and record exactly how and where ash materials are disposed. Industry chippers under compliance agreements with DNR are responsible for keeping records for routine maintenance. The time required to do the paperwork is estimated to be less than six (6) man days per year. Assuming that the average employee earns fifteen dollars (\$15) per hour, the annual reporting and record keeping costs to each small business would be \$720.00 per year. The costs incurred by campgrounds includes firewood management which involves training staff to ask campers if they brought firewood, exchanging firewood with campers if they brought firewood, and the collection and burning of firewood left at campsites. These administrative costs are not the result of the quarantine but the result of emerald ash borer presence near their campground. Thus there is no anticipated record keeping or administrative cost for campgrounds. Firewood producers that move regulated materials



outside of the quarantined areas would require a compliance agreement. The statement provided by the NRC estimates that according to a Division of Plant Pathology analysis there is only one registered business that is a firewood producer in the quarantined area. The administrative costs for the firewood producer in the quarantined areas are estimated to be the same as sawmill/logging companies.

There is further impact to the small businesses that are in the quarantined area. Nurseries and nursery dealers in quarantined townships will most likely stop sale of ash seedlings or trees due to the emerald ash borer's impact on the market. The trees can not be sold and moved outside the quarantined area because the only method to certify the tree free of the emerald ash borer would kill the tree. The economic impact to each of these small businesses in loss of revenue will be determined by how much ash material each business currently has in stock. A two (2) inch caliper ash tree can be sold for approximately one hundred and ten (\$110.00) dollars at wholesale and one hundred and seventy five (\$175.00) dollars at retail. Thus, the total annual economic impact may be a few hundred dollars to several thousand dollars from the loss of ash trees not sold and removed from inventory. The impact of the emerald ash borer and the United States Department of Agriculture/Animal and Plant Health Inspection Services ("USDA/APHIS") quarantine, which was instituted in 2006, has reduced if not completely eliminated the sale of ash trees in Indiana. Once the ash trees are removed, the nursery will have no further impact from the quarantine, and will not have any economic impact to comply with the quarantine.

Primary sawmills, those that process logs into sawn lumber, are a risk for spreading emerald ash borer from an infested forest. Secondary sawmills pose less of a threat as these sawmills typically handle sawn lumber or other material that has already been mitigated in a manner that would decrease the likelihood of spreading emerald ash borer. Logging companies and timber buyers also pose a threat of spreading the emerald ash borer by moving infested trees. The economic impact to these small businesses would only apply if the small business in question handles ash material.

The economic impact to sawmills, logging companies and timber buyers involves additions and changes to the business operation to comply with the quarantine. These changes include the transportation of logs from forest to sawmill, and cutting the wood in an expedited manner to comply with the quarantine. Making these changes may incur additional operating cost small businesses. As part of the quarantine, during the summer, ash logs must be moved in completely enclosed vehicles to prevent further spreading. Sawmills and loggers may choose not to handle ash during the summer season. The annual cost per business to comply is expected to be minimal. DNR estimates the cost to be \$720 a year, which does not include impacts for businesses who choose not to handle ash.

For arborists, it is estimated that the economic impact will occur through additional handling and hauling of regulated ash material, as well as the mitigation and disposal of ash material. The costs may be passed on to the consumer or they may be absorbed through the sale of mitigated ash material. The DNR, Division of Entomology and Plant Pathology have recently instituted a program to assist arborist and the chipper industry with compliance. The program certifies the chipper once a year with the business having a one time cost of 0.5 man day per crew of two employees. With an estimated hourly wage at fifteen dollars (\$15.00) per crew member, the estimated cost to small business per chipper would be one hundred and twenty

dollars (\$120.00) per chipper. By placing the chippers under compliance agreements for up to a year and monitoring the effectiveness of the chipper in question, the DNR is able to ensure compliance with the rule and materials chipped by these chippers are deregulated prior to exiting quarantined areas. The annual economic impact per arborist business is expected to be minimal, approximately \$840 per year. This includes the cost of having each business' chippers under a compliance agreement for mitigation of regulated articles.

For firewood producers the economic impact involves changes to business operations to comply with quarantine requirements. This includes ensuring that regulated material is not being moved outside of quarantined areas without mitigation. The annual economic impact to comply is estimated to be minimal.

As stated above nurseries, nursery dealers and campgrounds will not be impacted directly by the imposition of this rule. Nurseries and dealers have already been impacted by the imposition of the federal quarantine instituted by the USDA/APHIS and most heavily impacted by consumer awareness of the emerald ash borer and the possibility and probability of this invasive species infesting trees in Indiana. Campgrounds will not be economically impacted directly by the rule but by their willingness to comply with the rule to restrict movement of firewood into their private forests. If any economic impact would occur to private campgrounds, it would be in the form of lost business if customers refuse to camp where they could not bring their own firewood. Sawmills (primary and secondary), logging companies, timber buyers, and arborists will be impacted only if they utilize regulated ash material. Considering the federal and state quarantines, many companies may decide to stop using these materials in favor of non-quarantined materials. The total potential economic impact to all small businesses in the quarantined area is \$7,440.00. This analysis is based on the assumption that every small business in the quarantined area would require a compliance agreement and utilize regulated materials. It is the opinion of the DNR that only one half to three quarters of the small businesses analyzed in the proposed quarantine area would require a compliance agreement. This would significantly reduce potential economic impact to small businesses in the quarantined area.

This rule is made to comply with a rule directed by the United States Department of Agriculture. The rule is to ensure that the ash tree population, upon which many small businesses depend, does not continue to deteriorate. The impact statement notes that the rule only impacts those businesses that choose to handle the regulated material. Those that choose not to handle ash trees or ash tree products will not be impacted. The statement also explains that costs to businesses to comply with the rule for those that choose to handle regulated material are not substantial. The IEDC does not object to the economic impact to small business associated with this proposed rule.

If you have any questions about the comments contained herein please contact me at 232-8962 or rasberry@iedc.in.gov.

Regards,



Ryan Asberry
Assistant Vice President